WONG FOONG SHIN v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) July 14, 1955]

[Singapore — Magistrate's Appeal No. 24 of 1955]

Trade Marks — Merchandise Marks Ordinance (Cap. 157), s. 12 — Possession for sale of goods with counterfeit trade mark — Whether Court can look at the general get-up of the goods.

This was an appeal against the conviction of the appellant on three charges under s. 12 of the Merchandise Marks Ordinance, of having in his possession for sale pencils and pens with a counterfeit trade mark affixed thereto, namely a mark so nearly resembling the "Arrow" trade mark, the property of the Parker Pen Company, as to be calculated to deceive.

The device of an arrow was registered by the Parker Pen Company in Singapore under the Trade Marks Ordinance and the evidence showed that all pens and pencils manufactured by the Parker Pen Company bore clips in the form of an arrow. The learned District Judge held that in order to reach a decision he should look not only at the clips but also at the articles as a whole including their general get-up.

Held: (1) as the particular form of the clip was the only mark which was alleged to have been counterfeited, it is necessary primarily to consider the clips; (2) other resemblances in the goods concerned were only relevant as regards intention so far as that may be material but unless that was so it was wrong to consider anything but the marks *per se*; (3) there was in fact no resemblance between the clips in the pens and pencils in this particular case, if the clips were looked at in isolation from the rest of the articles, and therefore the conviction of the appellant must be set aside.

MAGISTRATE'S APPEAL.

Dr. C. H. Withers-Payne for the appellant.

K. A. Seth (*T. H. A. Potts* with him) for the respondent.

Murray-Aynsley C.J. : — This was a trade mark case. The appellant was charged with counterfeiting the wellknown "Parker" trade mark on certain pens and pencils. This trade mark is the familiar arrow which has been registered. The pens and pencils have a clip in the form of a conventional arrow. Whether this can be considered as a trade mark I am uncertain and I do not decide the point. But the particular form of the clip is the only mark which is alleged to have been counterfeited.

As regards the articles of the appellant, it is clear that in their general get-up they closely resemble those of the complainants. But this is not here the matter for consideration. This is not a case of passing-off. It is necessary, primarily, to consider the clips. If these so closely resemble those of the complainants as to be likely to cause confusion it may be necessary to consider other resemblances in the goods concerned. This I think is relevant as regards intention so far as that may be material. But unless this is so I think that it is wrong to consider anything but the marks *per se*. It is in this respect that I differ from the learned District Judge.

In the present case, looking at the clips in isolation from the rest of the articles, I cannot see any resemblance except the general resemblance which all clips have one to another and which they must have in order to fulfil their mechanical purpose.

In these circumstances I allowed the appeal.

Appeal allowed.

Solicitors : *Drew & Napier; Sisson & Delay.*

LIM YAM HENG v. CHOO SWEE CHOO (f)

[A. C. J. (Tan Ah Tah J.) August 16, 1955]

[Singapore — District Court Appeal No. 15 of 1955]

Married Women and Children (Maintenance) Ordinance, 1949, ss. 2 and 4 — Claim for maintenance by wife — Offer by husband to maintain if she lives with him.

This was an appeal against an order made under s. 2(1) of the Married Women and Children (Maintenance) Ordinance, 1949, whereby the appellant was ordered to pay the sum of $50.00 monthly for the maintenance of his wife the respondent. It appeared that at the hearing the appellant informed the Court that he wanted his wife to return to the matrimonial home. The learned Magistrate made the order as he found that the appellant had made no effort to take his wife home.

Held: (1) if a wife leaves the matrimonial home and her husband offers to maintain her on condition that she lives with him in the matrimonial home there is no legal obligation on the husband to take positive steps to bring her home; (2) therefore the order made by the learned Magistrate in this case was wrong and must be set aside.

DISTRICT COURT APPEAL.

Lee Kuan Yew for the appellant.

Respondent in person.

Cur. Adv. Vult.

Tan Ah Tah J. : — This is an appeal from an order made on the 26th March 1955 under section 2(1) of the Married Women and Children (Maintenance) Ordinance No. 26 of 1949 by the Sixth Police Court whereby the appellant was ordered to pay the sum of $50 monthly for the maintenance of his wife, the respondent. At the hearing in the Police Court which commenced on the 12th March 1955 the appellant appears to have informed the Court that he wanted his wife to return to the matrimonial home. The matter was then adjourned to the 26th March 1955 on which date the abovementioned order was made.